

In re) Fair Hearing No. S-08/08-382
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 Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division establishing an overpayment of Food Stamps. The issue is whether the Department can assess an overpayment amount if the recipient is not at fault for the overpayment.¹

1. The petitioner is a recipient of Food Stamps. From November 1, 2007 through May 31, 2008 she received Food Stamps as the "head of household" consisting of herself and her infant child. The amount of her grant was based solely on her own income during this period.

2. The Department does not dispute that the petitioner accurately reported her household composition during this

1 Following a hearing in this matter held on October 2, 2008 the record was held open to allow the petitioner's representative to submit legal precedent she claimed could have bearing on the issue in this matter. To date, no such submission has been forthcoming.

period. The Department further admits that it erroneously failed to consider that the petitioner was living with her parents and that it failed to count the parents' income in calculating the amount of the petitioner's Food Stamps.

3. There is no dispute that the petitioner received a total of \$1,134 in Food Stamps that she would not have been eligible for had the Department correctly counted the income of all the required household members during this period.

4. Due to its admitted error, the Department has agreed to "compromise" the petitioner's overpayment to the maximum allowable of 50 percent.

5. The petitioner does not dispute that under the pertinent rules regarding household composition the Department was required to include her parents as members of her household and to consider their income in determining the entire household's eligibility for Food Stamps. She maintains, however, that she should not be held liable for any amount of overpayment due to the Department's error in causing it.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner does not dispute that she was living with her parents during the period in question, that the regulations require the Department to consider her parents' income in determining the household's eligibility for Food Stamps², and that as a result she was overpaid \$1,134 in Food Stamps during this time. The Department concedes that the petitioner was not at fault in reporting her household composition and that the overpayment is solely the result of the Department's error.

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). Even if the overpayment can be determined to have been the Department's fault, the regulations provide: "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action . . ." F.S.M. § 273.18(a)(2). The Department is required to "take action to establish a claim against any household that received an over issuance due to an . . . administrative error if . . . [a] state agency incorrectly computed the household's income

or deductions, or otherwise assigned an incorrect allotment" so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii).³

Inasmuch as the Department's decision is in accord with the above regulations, the Board is bound by law to affirm.
3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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² See F.S.M. § 273.1(a).

³ If the household is continuing to receive Food Stamps, the required repayment is the greater of ten percent of the household's monthly allotment or \$10 per month when the claim is based on administrative error—twenty percent or \$10 when caused by household error. F.S.M. § 273.18(g)(4).